

UNITED STATES PATENT AND TRADEMARK OFFICE

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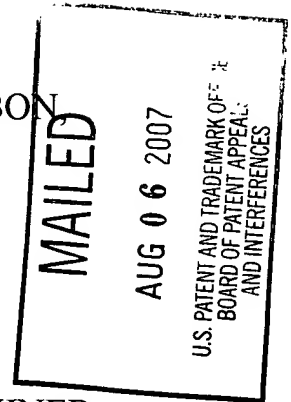
BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JAMES R. DURKEE, DAVID CRAWFORD GIBBON  
and BEHZAD SHAHRARAY

Application 09/848,581  
Technology Center 2600

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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This application was electronically received at the Board of Patent Appeals and Interferences on July 21, 2007. A review has revealed that the application is not ready for docketing as an appeal. Accordingly, this application is herewith being returned to the Examiner. The matters requiring attention prior to docketing are identified below:

On May 22, 2006, an Examiner's Answer was entered into the record. In the Evidence Relied Upon section, pp. 2-3, paragraph 8, the Examiner has failed to list Vallone (US 6,642,939) and Bertram (US 5,606,374) as applied to the statement of rejections in the Grounds of Rejection, paragraph 9 of the Examiner's Answer. Further review of the Examiner's Answer reveals that the Examiner fails to list a statement acknowledging that the Appeal Brief has identified by name the real party in interest, paragraph 1. *See the Manual of Patent Examining Procedure, (MPEP) § 1207.02(A)(1).*

Before further review, the Examiner must mail a PTOL-90 that will include in the amended Evidence Relied Upon section, a listing of *all* references mentioned in

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the Grounds of Rejection, paragraph 9, and also provide a statement acknowledging the real party in interest, paragraph 1. *See MPEP* § 1207.02.

Accordingly, it is *ORDERED* that the application is returned to the Examiner:

(1) to issue and mail a PTOL-90 which shall include all references mentioned in paragraph 9 (Grounds of Rejection), in accordance with the above instruction; and,

(2) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By:   
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PATRICK J. NOLAN  
Deputy Chief Appeals Administrator  
(571) 272-9797

BROOKS KUSHMAN P.C.  
1000 TOWN CENTER  
TWENTY-SECOND FLOOR  
SOUTHFIELD, MI 48075

PJN/hh